

STATE OF MICHIGAN
COURT OF APPEALS

AMANDA CONWAY, by her NEXT FRIEND,
HOWARD CONWAY,

UNPUBLISHED
August 4, 2005

Plaintiff-Appellant,

v

ESTATE OF RONALD POPA,

No. 261981
Oakland Circuit Court
LC No. 04-056020-NI

Defendant-Appellee,

and

FERNDALE PUBLIC SCHOOLS and HERBERT
IVORY,

Defendants.

Before: Zahra, P.J., and Gage and Murray, JJ.

PER CURIAM.

Plaintiff Amanda Conway, by her Next Friend, Howard Conway, appeals as of right the trial court's order granting summary disposition in favor of defendant Ronald Popa.¹ We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On October 10, 2003, plaintiff, then a fifteen-year-old student at Ferndale High School, was participating in a shop class taught by Popa. Plaintiff was building a bird feeder as a class project. The project required plaintiff to use a commercial table saw. Popa had altered the saw by removing various safety devices, thereby leaving the blade exposed. Plaintiff did not use a push stick, a device used to guide the wood, to move the piece of wood through the blade of the saw. The wood became stuck in the blade and kicked back at plaintiff, causing her to lose her balance and fall toward the saw. Plaintiff's left hand struck the blade of the saw, causing severe injuries and permanent disabilities and disfigurement.

¹ Defendant's last name is spelled as both "Popa" and "Papa" in documents filed in the trial court. The order from which plaintiff appeals spells the name as "Popa."

Plaintiff filed suit alleging that defendants² acted in a grossly negligent manner by, inter alia, removing safety devices from the saw, allowing students to use the saw in that condition, and failing to provide a push stick. Defendants moved for summary disposition pursuant to MCR 2.116(C)(7) and (10), arguing that reasonable minds could not disagree that they did not act in a grossly negligent manner, and that their conduct did not constitute “the” proximate cause of the accident. The trial court agreed and granted summary disposition in favor of defendants.

We review a trial court’s decision on a motion for summary disposition de novo. *Auto Club Group Ins Co v Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2001).

Governmental employees are immune from liability for injuries they cause during the course of their employment if they are acting within the scope of their authority, if they are engaged in the discharge of a governmental function, and if their “conduct does not amount to gross negligence that is the proximate cause of the injury or damage.” MCL 691.1407(2)(a-c). Gross negligence is defined as “conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results.” MCL 691.1407(2)(c). To be the proximate cause of an injury, the gross negligence must be “the one most immediate, efficient, and direct cause” preceding the injury. *Robinson v Detroit*, 462 Mich 439, 462; 613 NW2d 307 (2000). Evidence of ordinary negligence does not create a genuine issue of material fact regarding gross negligence. *Maiden v Rozwood*, 461 Mich 109, 122-123; 597 NW2d 817 (1999). Generally, the determination whether a governmental employee’s conduct constituted gross negligence is a question of fact, but if reasonable minds could not differ, the trial court may decide the issue as a matter of law. *Tarlea v Crabtree*, 263 Mich App 80, 83; 687 NW2d 333 (2004).

We agree with the trial court that plaintiff failed to establish a jury submissible issue as to whether Popa’s actions were grossly negligent. To establish gross negligence, a plaintiff must focus on the actions of the defendant, not on the result of those actions. *Maiden, supra* at 127. The essence of plaintiff’s claim against Popa is that by removing the safety devices from the saw, and allowing students to use the saw with the blade unguarded, Popa acted in a grossly negligent manner as that term is defined by MCL 691.1407(2)(c). The evidence showed that Popa removed the safety devices because when wood was cut with the devices in place, saw dust collected under the blade guard and impeded the students’ view of the wood. Popa stated that when this occurred, students would place their hands under the guard in order to guide the wood. Popa considered such actions to be very unsafe, and determined that students could operate the saw more safely without the safety devices if given proper instruction. Popa required students to pass a safety test before they could work on the machines in the shop room, including the saw. Plaintiff passed the test. Here, the evidence showed that Popa instructed his students on the safe operation of the unguarded saw. To find that a defendant acted in a grossly negligent manner is to conclude that the defendant simply did not care about the safety of the person under his supervision. *Tarlea, supra* at 90. No evidence supports such a finding in this case. Moreover,

² Plaintiff named the school district, Herbert Ivory, the school principal, and Popa as defendants. Popa died during the pendency of the action, and his Estate was substituted as a party defendant. The trial court granted summary disposition in favor of all defendants; however, plaintiff challenges the decision as to Popa, only.

evidence of ordinary negligence does not create a question of fact regarding gross negligence. *Maiden, supra* at 122-123.

Plaintiff asserts that the trial court erred by disregarding her expert witness's opinion that Popa acted in a grossly negligent manner; however, plaintiff cites no authority that holds that the mere assertion that a defendant acted in a grossly negligent manner is sufficient, in and of itself, to warrant submission of the issue to the jury. This case is also distinguishable from *Tallman v Markstrom*, 180 Mich App 141; 446 NW2d 618 (1989), a case on which plaintiff relies, in that in *Tallman*, no evidence showed that the defendant took steps to avoid the known danger associated with the operation of an unguarded saw.

Additionally, plaintiff did not use a push stick to guide the wood through the blade, notwithstanding the fact that Popa had instructed her to do so every time she used the saw. The trial court did not err by concluding that reasonable minds could not disagree that Popa's conduct was not "the" proximate cause of plaintiff's injuries. *Robinson, supra*.

Affirmed.

/s/ Brian K. Zahra
/s/ Hilda R. Gage
/s/ Christopher M. Murray